

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> JOSEPH BIRDS HEAD,  <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">5:23-CR-50147-RAL</p> <p style="text-align: center;">OPINION AND ORDER DENYING MOTION TO DISMISS</p>
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Defendant Joseph Birds Head was indicted for violating 18 U.S.C. § 922(g)(1) and moved to dismiss the Indictment, arguing that § 922(g)(1) is unconstitutional based on the Second Amendment and the United States Supreme Court’s decision in New York State Rifle & Pistol Ass’n v. Bruen, 142 S. Ct. 2111 (2022). Doc. 29. Magistrate Judge Daneta Wollmann entered a Report and Recommendation on the motion to dismiss, recommending that Birds Head’s motion be dismissed. Doc. 30. Birds Head objected to Judge Wollmann’s recommendation, reasserting his original arguments and preserving the issue for appeal. Doc. 33.

A district court reviews a report and recommendation under the standards provided in 28 U.S.C. § 636(b)(1), which states that “[a] judge of the [district] court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. [The district] judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

As Birds Head concedes on the first page of his Motion and Memorandum in Support of Motion to Dismiss, Doc. 29, the United States Court of Appeals for the Eighth Circuit has unequivocally rejected this argument in two recent cases: United States v. Cunningham, 70 F.4th

502, 506 (8th Cir. 2023) (holding that 18 U.S.C. § 922(g)(1) is facially constitutional) and United States v. Jackson, 69 F.4th 495 (8th Cir. 2023), reh'g en banc denied, 2023 WL 5605618 (8th Cir. 2023). As the Eighth Circuit itself recognized, “Together, [these cases] spell the end for [Birds Head’s] constitutional challenge.” United States v. Doss, No. 22-3362, 2023 WL 8299064, at \*1 (8th Cir. Dec. 1, 2023) (per curiam) (unpublished) (rejecting yet another challenge to the constitutionality of 18 U.S.C. § 922(g)(1)).

In light of this adverse Eighth Circuit precedent, Birds Head recognizes that this Court is powerless to grant the relief he requests. Doc. 29 at 1 (stating “Birds Head acknowledges that this court is unable to provide the relief sought by his motion). Indeed, district courts within the Eighth Circuit are bound to follow precedential decisions of the United States Court of Appeals for the Eighth Circuit. Hood v. United States, 342 F.3d 861, 864 (8th Cir. 2003); see also United States v. Faust, No. 23-CR-2005, 2023 WL 4669028, at \*5 (N.D. Iowa June 30, 2023). Absent the Eighth Circuit changing course and overruling its decisions in Cunningham, Jackson, and Doss, this Court must faithfully adhere to the dictates of those opinions. Therefore, it is

ORDERED that Defendant Joseph Birds Head’s objections to the Report and Recommendation, Doc. 33, are overruled, and the Report and Recommendation, Doc. 30, is adopted. It is further

ORDERED that Defendant Joseph Birds Head’s Motion to Dismiss, Doc. 29, is denied.

DATED this 4th day of March, 2024.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE